



CTIA

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Cellular Telecommunications Industry Association

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November 20, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., 2nd Floor
Washington, DC 20554

**Re: Revision of the Commission's Rules to Ensure
Compatibility with Enhanced 911 Emergency Calling
Systems, CC Docket No. 94-102**

Dear Ms. Salas:

On November 20, 1998, the Cellular Telecommunications Industry Association ("CTIA") served, via hand-delivery, a copy of the attached letter addressed to Chairman William E. Kennard to the following members of the Federal Communications Commission:

The Honorable William E. Kennard, Chairman
The Honorable Susan Ness, Commissioner
The Honorable Harold Furchtgott-Roth, Commissioner
The Honorable Michael K. Powell, Commissioner
The Honorable Gloria Tristani, Commissioner

Wireless Telecommunication Bureau

Mr. John Cimko, Chief
Ms. Nancy Boocker, Chief
Ms. Rosalind Allen, Deputy Bureau Chief
Ms. Kathleen O'Brien Ham, Deputy Bureau Chief
Mr. Gerald Vaughn, Deputy Bureau Chief
Ms. Jeanine Polronieri, Associate Bureau Chief
Ms. Elizabeth Lyle, Senior Legal Advisor

Office of Engineering and Technology

Mr. Dale Hatfield, Chief
Mr. Bruce Franca, Deputy Chief

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Policy and Rules Division

Mr. Julius Knapp, Chief

Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter and its attachment are being filed with your office. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Terri Granison", with a long horizontal flourish extending to the right.

Terri Granison
Paralegal

Attachment

November 20, 1998

Chairman William E. Kennard
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, DC 20554

Re: Revision of the Commission's Rules to Ensure Compatibility with
Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102

Dear Chairman Kennard:

The Independent Cellular Services Association ("ICSA") has recently renewed its request that the Commission modify its rules to permit more than one wireless handset to be programmed with the same Mobile Identification Number ("MIN") and Electronic Serial Number ("ESN").¹ According to the ICSA, the ostensible purpose of this change would be to improve public safety. The ICSA reasons that if it and its members are permitted to clone cellular phones, consumers would then install older, larger, and more powerful 3 watt telephones in their cars while owning a second, handheld wireless telephone for use outside the car. The ICSA relies upon the arguments made by the Ad Hoc Alliance for Public Access to 911 to claim that these more powerful telephones will improve access to 9-1-1.

CTIA continues to oppose the efforts of the ICSA to seek the Commission's consent to clone cellular phones.² The ICSA's recent attempt to cloak its efforts under

¹ See Revision of the Commission's Rules to Ensure Compatibility with E9-1-1 Emergency Calling Systems, CC Docket No. 94-102, *Ex Parte* Presentations of the Independent Cellular Services Association (filed October 6, 1998 and September 17, 1998) ("ICSA *ex parte*").

² The Commission addressed this issue in its *Report and Order* in CC Docket No. 92-115, Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, 9 FCC Rcd. 6513, 6525 (1994) ("the practice of altering cellular phones without receiving the permission of the relevant



the cover of "public safety" must fail for two reasons: 1) cloning a wireless phone's MIN/ESN is not needed to dial 9-1-1 in an emergency, and 2) the ICSA proposal is illegal under the Criminal Code of the United States.

The ICSA claims that consumers are interested in installing 3 watt cellular phones in their cars for the purpose of improving access to emergency services. Assuming this is true, the ICSA has offered no evidence to support its illogical leap that a rule change permitting its members to clone ESN/MIN combinations is a prerequisite to installing cellular car phones for use in emergency situations. Any consumer interested in installing a cellular car phone to reach 9-1-1 may do so without having to purchase service for that second phone. Under the Commission's E9-1-1 rules, carriers are required to transmit all 9-1-1 calls without validation.³ Thus, emergency calls from cellular car phones, even those without service, will be transmitted when 9-1-1 is dialed. In fact, the Commission recognized that certain consumers may wish to obtain cellular telephones without purchasing service for emergency access, similar to the ICSA's claims, and concluded that the benefits of such access enhances public safety.⁴ The ICSA has obviously over-reached in its effort to use public safety as a reason to clone cellular MINs and ESNs.⁵

Moreover, Congress, in adopting the "Wireless Telephone Protection Act" ("WTPA"), recently made clear that possession of equipment used to modify the MIN or ESN of a cellular telephone so that the phone may be used to obtain unauthorized

cellular licensee should not be allowed because (1) simultaneous use of cellular telephones fraudulently emitting the ESN without the licensee's permission could cause problems in some cellular systems such as erroneous tracking or billing; (2) fraudulent use of such phones without the licensee's permission could deprive cellular carriers of monthly per telephone revenues to which they are entitled; and (3) such altered phones not authorized by the carrier would therefore not fall within the licensee's blanket license, and thus would be unlicensed transmitters in violation of Section 301 of the Act.")

³ Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, *Memorandum Opinion and Order*, 12 FCC Rcd 22665, at ¶ 33 (1997).

⁴ Id. at ¶ 35.

⁵ Moreover, rather than enhancing public safety, there is evidence in the record of this proceeding of the mischief caused by hoax calls to 9-1-1 from cloned phones. False alarms and hoax calls from cloned phones cannot be linked to the caller using the account information available to the carrier.

cellular service is illegal.⁶ On this basis alone, the Commission should reject the ICSA's proposal. The reference in the ICSA *ex parte* to the Senate debate misses the main point of the colloquy -- even if the Commission were to change its rules to permit ICSA's proposal, the U.S. criminal code would still prohibit the conduct until (and unless) Congress were to repeal section 1029(a)(9) of Title 18.⁷ In other words, the Commission is without authority to decriminalize that which Congress has prohibited. If the Commission permitted cloning under any circumstances, including for the limited purpose of providing 911 access, it would fail in its attempt to create an exception to the WTPA. Only Congress has the authority to address a change Title 18 that would permit ICSA's members to possess illegal equipment.

Because cloning cellular phones is unnecessary to improve access to emergency services and because Congress has made its preference against cloning clear, the Commission should reject the ICSA's attempts to legalize cloning under the guise of this proceeding.

Sincerely,



Brian Fuentes

cc: Commissioner Ness
Commissioner Furchtgott-Roth
Commissioner Powell
Commissioner Tristani
Magalie Roman Salas

⁶ 18 U.S.C. § 1029(a)(9). A phone altered as ICSA requests would not be limited to only 9-1-1 service, but rather could be used to obtain unauthorized wireless service.

⁷ See ICSA *ex parte* at Attachment 1 (quoting Senator Leahy).